levying this tax on the capital there was no effort or attempt to discriminate between the capital used in interstate business and that in intrastate indicates that the fee was a mere device to reach and burden the interstate commerce of the corporation, which in itself distinguishes it from the cases first considered.

Later cases, however, have held that a State has the power to exact of a foreign corporation a license fee or excise tax for the privilege of doing intrastate business, although the corporation was primarily organized for and engaged principally in interstate business.[16] They are distinguished from the Kansas cases by the fact that the tax was laid exclusively on property and capital used in the intrastate business. The recent case of *Baltic Mining Co.* v. *Massachusetts,* 34 Sup. Ct. 15, has again drawn the distinction between these two classes of cases. The court held that a privilege tax imposed by the State upon the purely local and domestic business of a foreign corporation engaged in both intrastate and interstate business is valid and not an interference with commerce, if such local business is separate from and not in such close connection with the interstate business that it cannot be abandoned without seriously impairing the interstate business. This view seems to be the one best supported by the authorities.

CORROBORATION OF TESTIMONY BY PRIOR STATEMENT.—Before the eighteenth century it was generally held that the evidence of a witness might be invalidated or confirmed by evidence of statements made by him at a prior time.[1] But in the eighteenth century the courts began drawing away from this doctrine, for the reason that it was improper to allow testimony given under oath to be overcome by statements made under any and all circumstances, just as it was improper to attempt to support testimony by mere evidence of repetition, and in 1783 it was held that such evidence was inadmissible.[2] In this country the general rule that such evidence is inadmissible was early adopted by the courts,[3] but great conflict has arisen over the exceptions, if any, to be recognized to it.[4]

I. Where the testimony of the witness has been impeached on the ground of inconsistent statements made before the trial, the de-

[16] Williams *v.* Talladega, 226 U. S. 404; Ewing *v.* Leavenworth, 226 U. S. 464.

[1] See Lutterell *v.* Reynell, 1 Mod. 282; 2 HAWKINS, PLEAS OF THE CROWN, 6 ed., 606; 1 GREENLEAF, EV., 16 ed., 605.

[2] Rex *v.* Parker, 3 Doug. 242. Butler, J., in laying down the rule said simply that "what a witness said not upon oath would not be admitted to confirm what he said upon oath; and that the case of Lutterell *v.* Reynell, *supra,* was not now law."

[3] Ellicott *v.* Pearl, 35 U. S. (10 Peters) 412, 439. However, it was recognized in this case that exceptions must be made to the general rule. State *v.* Parrish, 79 N. C. 610.

[4] 2 WIGMORE, EV., 1123; 3 ENCYC. EV. 740.

cisions are conflicting as to whether prior consistent statements may be introduced in corroboration, but by the weight of authority the prior consistent statements are inadmissible.[5] The courts which hold that such testimony is inadmissible base their decisions on the argument that where self-contradiction has been proved, it cannot be explained away by proof of consistent statements.[6] The courts which hold that such testimony is admissible contend, on the other hand, that the corroborating evidence is just as valuable to support the evidence as the inconsistent statements are to overcome it.[7] A third and better opinion than either of the other two is that whether or not such evidence is admissible in a particular case should be left to the reasonable discretion of the trial judge, as under peculiar circumstances such evidence might be very valuable.[8] This view has been pointed out by one or two text-writers, and has been noticed by very few of the courts.[9]

II. Where the testimony of a witness has been contradicted by the testimony of other witnesses, it is clear that the prior consistent statements of the impeached witness are not admissible, as mere repetition cannot strengthen his statements, and the majority of the courts so hold.[10] But a small minority of the courts hold that the prior consistent statements strengthen the testimony of the witness, and should be admitted.[11]

III. Another interesting case arises where the testimony of a witness is impeached on the ground that he has a motive for giving false testimony, and that his testimony has been recently fabricated through bias, interest, or corruption. In such a case, if it can be proved that the witness made statements before the time his motives of interest or corruption had arisen or been contemplated, which are consistent with his testimony on the witness stand,

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[5] Conrad *v.* Griffey, 11 How. (U. S.) 480; McKelton *v.* State, 86 Ala. 594, 6 So. 301; Smith *v.* Stickney, 17 Barb. (N. Y.) 489; Cincinnati Traction Co. *v.* Stephens, 75 Ohio St. 171, 79 N. E. 235; Commonwealth *v.* Jenkins, 10 Gray (Mass.) 485. *Contra,* McKee *v.* Jones, 6 Pa. St. 425; State *v.* Cady, 15 S. D. 167, 87 N. W. 927. See, also, Hicks *v.* State, 165 Ind. 440, 75 N. E. 641; State *v.* Staton, 114 N. C. 813, 19 S. E. 96.

[6] Commonwealth *v.* Jenkins, *supra;* Cincinnati Traction Co. *v.* Stephens, *supra.*

[7] Jones *v.* Jones, 80 N. C. 246.

[8] For instance where the principal witness is a young child, or where the previous consistent statement was in writing.

[9] 2 WIGMORE, EV., 1326. See Stewart *v.* People, 23 Mich. 63. In this case Judge Cooley said: "It is impossible to lay down any arbitrary rule which could be properly applied to every case in which this question could arise; but we think that there are some cases in which the peculiar circumstances would render this species of evidence important and forcible. We think the circuit judge ought to be allowed a reasonable discretion in such cases, and that though such evidence should not generally be received, yet that his discretion in receiving it ought not to be set aside except in a clear case of abuse."

[10] Stolp *v.* Blair, 68 Ill. 541; Carter *v.* Carter, 79 Ind. 466.

[11] Mallonee *v.* Duff, 72 Md. 283, 19 Atl. 708. See, also, Gill *v.* Staylor, 93 Md. 453, 49 Atl. 650.

such prior statements necessarily strengthen his testimony materially. This view is generally sustained by the courts.[12] The view of the majority of the courts has recently been upheld by the case of *People* v. *Katz* (N. Y.), 103 N. E. 305. In that case an accomplice had at the beginning of the trial been promised immunity by the district attorney if he would become a witness against the defendant. To this the accomplice agreed, and at the trial his testimony was impeached by the defense on the ground that he was actuated by motives of self-interest. Evidence was then offered of a statement made by the witness a year before he had been promised immunity by the district attorney, which statement corroborated the testimony given by him at the trial. The court held the prior statement to be admissible. An accomplice is always under suspicion, and it has been said that prior consistent statements made by him cannot be admitted in corroboration of his testimony unless some other principle may be invoked by reason of the impeachment of his testimony.[13] But the courts are divided on this question.[14] In the principle case, however, the prior consistent statements of the witness were admitted because his testimony had been impeached on the ground of interest, and not merely because the witness was an accomplice.

RECOVERY OF MONEY PAID UNDER DURESS.—The rule is settled that money paid under duress can be recovered back; on this point the courts are practically in accord. But, though the rule is an invariable one, its application often gives rise to considerable trouble, for it is frequently difficult to determine whether the circumstances of a particular case constitute duress.

Inasmuch as duress may assume many different forms and be attended by circumstances of a diverse nature, it becomes exceedingly difficult to define it in a satisfactory manner. In a leading case decided by the United States Supreme Court it was said that "To constitute the coercion or duress which will be regarded as sufficient to make a payment involuntary, there must be some actual or threatened exercise of power possessed, or believed to be possessed, by the party exacting or receiving the payment over the person or property of another, from which the other has no other means of immediate relief than by making the payment." [1] This definition seems to have met with more approval by the courts than any other that has been advanced.

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[12] Griffin *v.* Boston, 188 Mass. 475, 74 N. E. 687; Sweeney *v.* Sweeney, 121 Ga. 293, 48 S. E. 984; French *v.* Merrill, 6 N. H. 465. See, also, Chicago City R. Co. *v.* Matthieson, 212 Ill. 292, 72 N. E. 443.

[13] 2 WIGMORE, EV., 1329.

[14] See State *v.* Callahan, 47 La. Ann. 444, 17 So. 50. A *dictum* in this opinion seems to hold that such testimony is inadmissible. *Contra,* People *v.* Vane, 12 Wend. (N. Y.) 78.

[1] Radich *v.* Hutchins, 95 U. S. 210, 24 L. Ed. 409.